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Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn.

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Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea

Summary

This report covers the period from the latter part of 2008 to mid-2009. The analysis points to an array of rights and freedoms which are violated egregiously by the authorities on a daily basis, much to the pain and suffering of the ordinary population. The violations are evidently widespread, systematic and abhorrent in their impact and implications. The freedoms from want, from fear, from discrimination, from persecution and from exploitation are regrettably transgressed with impunity by those authorities, in an astonishing setting of abuse after abuse, multiplied incessantly. They compromise and threaten not only human rights, but also international peace and security. To counter these violations, the Special Rapporteur's urgent call for action demands comprehensive responses at all levels, national and international.

The authorities in the Democratic People's Republic of Korea are advised to take measures to respond effectively with regard to the right to freedom from want by ensuring effective provision of and access to food and other basic necessities for those in need and to cooperate constructively with United Nations agencies and other humanitarian actors on the issue; to enable people to undertake economic activities to satisfy their basic needs and supplement their livelihood without State interference; to respect the right to freedom from persecution by ending the punishment of those who seek asylum abroad and who are sent back to the country, and by instructing officials clearly to avoid the detention and inhumane treatment of such persons; to address the fear factor in the country by terminating public executions and abuses against security of the person by means of law reform, clearer instructions to law enforcers to respect human rights, and related capacity-building and monitoring of their work to ensure accountability; to cooperate effectively to resolve the issue of foreigners abducted to the country; to respond constructively to the recommendations of the Special Rapporteur; and to institute a democratic process, shifting the military budget to the social sector.

The international community is invited to underline concretely the need for an integrated approach to overcome the exploitation of the people by the State authorities by advocating for a "people first" rather than the current "military first" policy, coupled with an equitable development process; and to enable the totality of the United Nations system to activate measures to overcome key violations and help guarantee fundamental freedoms in the Democratic People's Republic of Korea.

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I. Introduction

1. The mandate of the Special Rapporteur was established by the Commission on Human Rights in 2004 and has been renewed annually to date. Under the mandate, the Special Rapporteur submits, on a yearly basis, one report to the Human Rights Council and another to the General Assembly. The Special Rapporteur warmly thanks Governments, members of civil society, United Nations agencies and other entities which have helped to provide information for the present report. Although he has sought to engage constructively and consistently with the authorities in the Democratic People's Republic of Korea, it is regrettable that they have declined to cooperate with the mandate.

2. The present report covers the human rights situation in the Democratic People's Republic of Korea from the latter part of 2008 to mid-2009. In it, the Special Rapporteur intends to appraise the situation of human rights and fundamental freedoms from the following angles: freedom from want, freedom from fear, freedom from discrimination, freedom from persecution and freedom from exploitation. It builds upon the report he submitted to the Human Rights Council earlier in 2009 (A/HRC/10/18), in which he underlined the need for more effective strategies of prevention, protection, provision and participation.

II. Situation

3. The Democratic People's Republic of Korea is a country with a centralized system of Government geared to upholding the topmost leadership (the Suryong) in a non-democratic setting.[1] In recent years, the authorities in the country have become slightly more open to engaging with the international community in some areas. First, the Democratic People's Republic of Korea is a party to four human rights treaties, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It appeared before the Committee on the Rights of the Child in 2009.

4. Second, subsequent to devastating floods in 2006 and 2007, the country has become more accessible to international aid and cooperated relatively well with the United Nations agencies that delivered aid to it in 2008. However, the door became less open in 2009, as described below. At times, there are also possibilities for constructive cooperation with a bilateral input, for instance, through the Republic of Korea-supported malaria control programme in the Democratic People's Republic of Korea, which has helped to provide medicines and offered capacity-building for reduction of the illness, in cooperation with the World Health Organization (WHO). Third, it has undertaken some law reform in recent years. For example, the Criminal Code and Criminal Procedure Code were amended several times during the period

[1] For recent literature on human rights in the country, see: White Paper on Human Rights in North Korea 2009, Korea Institute for National Unification (Seoul, 2009); White Paper on Human Rights in North Korea, Korean Bar Association (Seoul, 2009); State of the World's Human Rights, Amnesty International (London, 2009); Country Report: North Korea, Economist Intelligence Unit (London, 2008); White Paper on Human Rights in North Korea 2008, Korea Institute for National Unification (Seoul, 2008).

2004-2007, partly in response to the country's obligations under the above-mentioned human rights treaties.

5. Yet the general atmosphere in 2008-2009 has been negative for a number of reasons. The six-party talks aimed at denuclearizing the country are currently stalled because of the intransigence of the Democratic People's Republic of Korea. The various nuclear and missile tests carried out by the country in 2009 were both provocative and in violation of international law. They led to the imposition of a variety of sanctions by the Security Council. In resolution 1874 (2009), imposing such sanctions, however, the Council recalled the issue of human rights implicitly by underlining the importance of the Democratic People's Republic of Korea responding to other security and humanitarian concerns of the international community, and exempted from such sanctions the provision of international humanitarian aid to the country.

6. As a whole, the human rights situation in the country remains abysmal owing to the repressive nature of the power base: at once cloistered, controlled and callous. The array of violations cuts across civil, political, economic, social and cultural rights. They are fuelled by the country's stifling political environment and stultifying developmental process, compounded by a range of stupefying cruelties.

A. Freedom from want

7. Food shortages have been at the heart of the "want" factor confronting the general population since the mid-1990s. Food rations were provided by the State from the early days of the regime, through a public distribution system, as a means of maintaining State control over its people. The system failed drastically in the mid-1990s when a prolonged food crisis led to rampant malnutrition and other tragedies. This crisis was brought about by a combination of natural disasters, environmental degradation and mismanagement on the part of the authorities. The regime then started to accept foreign food aid to alleviate the chronic situation. In 2005/06, it tried to reduce such aid and the presence of international agencies working on the issue, in an attempt to curb outside influence, but this was overtaken by other events: devastating floods in 2006 and 2007.

8. These disasters put pressure on the authorities to reopen the door to outside aid. In 2006, the main United Nations agency dealing with the issue, the WFP, began its two-year Protracted Relief and Recovery Operation, aiming to access 1.9 million people with food aid. In 2008, a new agreement was reached between the authorities and WFP to assist some 6.5 million people. The WFP and the Food and Agriculture Organization of the United Nations (FAO) carried out an important food security assessment in June 2008. The initial findings revealed very disquieting features indicating a serious decline in food availability, food accessibility and food consumption. Particularly worrying was the finding that cases of children affected by diarrhoea had increased markedly, to nearly twice the number recorded in the previous Government/United Nations nutritional survey in 2005. Child malnutrition and illnesses have thus been on the rise.

9. WFP highlighted three groups as particularly food insecure: the socially vulnerable (children in child institutions, the elderly and children in paediatric wards); the physiologically vulnerable (pregnant and lactating women, children under 5 years of age and adolescents); and the geographically vulnerable

(particularly in the north-east and southern parts of the country). The immediate food needs are closely related to the shortage of fertilizers and fuel.

10. A joint WFP/FAO report later in the year (December 2008) noted that, despite better climatic conditions in 2008, there would still be a severe food shortage, necessitating international assistance. It is estimated that the total food production for 2008/09 will be 4.21 million tons, with a cereal deficit of 836,000 tons, despite possible commercial imports of some 500,000 tons. Particularly at risk are the urban poor and people in remote food-deficit areas in the north-east. The amount of food assistance needed until the next harvest (October 2009) is therefore calculated to be some 800,000 tons. FAO and WFP observed that the agricultural sector had not been able to benefit fully from the favourable weather in 2008 for the following main reasons:

- A long-term decline of soil fertility, mostly due to built-up acidity in soils reducing the plant absorption of nutrients from fertilizer;
- Perennial shortages of critical agricultural inputs, especially fuel and fertilizer;
- Vulnerability to extreme weather events, i.e. alarming trends in the concentration of summer rains, build-up in riverbeds, making them prone to flooding, and damaged or obsolete infrastructure;
- Structural factors, including constraints on market activities, use of natural resources, and unresolved distribution of benefits from higher productivity in both lowland and slope agriculture.[2]

11. Some 8.7 million people are food insecure and thus need help. Given that situation, there is also need for consistent nutritional assessment of the people concerned.

12. From mid-2008 to mid-2009, the World Food Programme (WFP) had more access to the field than it had had since 2005, covering 131 counties in eight provinces, up from the 50 counties supported under the Protracted Relief and Recovery Programme, and thereby (in principle) accessing 6,237,000 beneficiaries. The groups covered are mainly lactating women, primary schoolchildren, the elderly and persons with disabilities. There are also food for (work-related) community development activities. Food aid includes locally produced fortified foods, such as corn soya blend, rice milk blend and cereal milk blend. In 2009, FAO also initiated the Agricultural Rehabilitation and Recovery Programme aimed at prioritizing agricultural inputs, conservation agriculture, double cropping, vegetable production, agroforestry, and recovery of the livestock sector, with future emphasis on expanding dairy production, preparedness planning and vegetable seed multiplication.

13. Yet in 2009 the aid situation became more desperate. Owing to the shortage of international aid, influenced doubtlessly by the reaction to the nuclear and missile tests carried out by the Democratic People's Republic of Korea, the aid programme only managed to cover less than 2 million people. On another front, although in 2008 the offer by the United States of America of some 500,000 tons of food aid over a 12-month period was accepted by the country, and a group of United

[2] FAO/WFP, Special Report: FAO/WFP Crop and Food Security Assessment Mission to the Democratic People's Republic of Korea (8 December 2008), p. 3.

States (US) non-governmental organizations (NGOs) were permitted access to the country to help with the delivery, at the beginning of 2009, the country stopped accepting US aid and asked all the NGOs to leave. This was a result of the authorities' unease with the monitoring of the food aid process and the use of Korean interpreters from outside the country.

14. Other planned changes, due to the authorities' more stringent approach in the middle of 2009, include the following:

The reduction of WFP operations to cover only 57 counties in 6 provinces;

A reduction in the number of WFP staff;

WFP would no longer be able to employ international Korean speakers;

One week's advance notice would need to be given for monitoring visits (rather than 24 hours as before);

The authorities' interest in operating the various food-related warehouses now under WFP;

The Government's postponement of the nutritional assessment survey requested by United Nations agencies.

15. It should be noted that United Nations agencies work on the premise of "no access, no food", that is to say, food will not be given unless they have access to the targeted recipients. Also, United Nations and other agencies (such as the International Federation of Red Cross and Red Crescent Societies) are moving beyond food aid to more food-security oriented activities which may help to prevent disasters and deprivation, for example, watershed management and reforestation, and improvement of slope-land agriculture to supplement the food intake of the population.

16. Yet the suffering of the general population has been aggravated by the negative role of the authorities, for a number of reasons. First, it can be recalled that in 2002 the Government adopted various measures which opened the door to quasi-market activities, thus enabling the population to engage in the market system, to a limited extent, to produce, buy and sell their goods. The public distribution system was seen as non-functional, and people were given additional wages to fend for themselves. However, in 2005, for fear of losing their grip on the population, the authorities started to reimpose the public distribution system on the population and began to prohibit market activities. This was despite the fact that the public distribution system, especially in view of the inadequate rations available, was and remains unable to respond effectively to the needs of the population. FAO and WFP noted the erratic nature of the public distribution system (PDS) as follows:

"In 2004 PDS rations were in the range of 200-250 grams, but were increased to 500 grams in October 2005. However, the PDS continued to experience serious implementation challenges in providing nutritionally adequate quantities of cereals for many counties. In 2007 PDS rations were still at 500 grams until the floods in August, when distributions were interrupted due to losses of food stocks and damages to ration levels of 300-400 grams. At the beginning of 2008, the PDS ration was consistently reported by officials and households to be 350 grams, which was then reduced to 250 grams in May and

> further to 150 grams (around 500 Kcal per day/per person) between June and September. In October, they were adjusted upwards to 300 grams."[3]

17. Second, economic initiatives, particularly on the part of women, were severely curtailed in 2007/08 when the authorities prohibited women under 40 years of age from trading. Later, this age limit was raised to 49. Third, at the end of 2008, in the pursuit of State control over the population, the authorities planned to close general markets and banned rice sales in such markets, even though those markets had been a major source of income and food for the population. The authorities are now compelling the population to obtain grain and other produce directly from State-run stores. There have been various protests by traders against that diktat. The country's biggest wholesale market, in Pyongsung, was ordered closed, as part of the campaign to close general markets and convert them to farmers' markets.[4]

18. Fourth, it was reported that the authorities were beginning to register small plots of land with a view to eliminating private patch farming.[5] This "kitchen farming" has to date been very important for the survival of the general population, who lack adequate food and who undertake such farming to supplement food availability and intake. Such a restriction would cause further hardships for the general population, for whom the authorities are unable adequately to provide food and other assistance. Other deprivations include shortage of fertilizers, electricity, fuel and medicines. The social welfare system, including the quality of hospitals, is in serious decline.

19. On another front, the authorities cooperate relatively well with the United Nations Children's Fund (UNICEF) on a variety of activities which contribute to the fulfilment of the Millennium Development Goals, such as enrolment in primary schools, completion rates and literacy. Immunization services are reported to have improved substantially. Data will also be gathered through a multi-indicators cluster survey to be completed by the end of 2009. However, a key test of the statistics is their verification. On a more disquieting front, UNICEF reports that:

> "malnutrition in children, pregnant women and lactating mothers continues to be a serious concern in the Democratic People's Republic of Korea as a result of floods in 2007 and drastic reductions in food imports that traditionally meet a big chunk of such deficits. Child mortality (55 per 1,000 live births), chronic malnutrition among children under five (37 per cent) and malnutrition of pregnant women (32 per cent) remain high as a result of prolonged poverty, under-resourced health systems, decaying water and sanitation infrastructure, inadequate caring practices for young children and pregnant women, and fragile food security. Although access to education is quasi universal, the school environment with hundreds of classrooms damaged or destroyed by floods remains poor as well as the quality of education due to lack of resources and exposure."[6]

20. The authorities have also been cooperating with the United Nations Population Fund (UNFPA) on a long overdue national census and the final results are pending.

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[3] Ibid., p. 24.

[4] "North Korea today No. 283", 27 June 2009.

[5] "North Korea today No. 252", 19 November 2008.

[6] UNICEF, Humanitarian Action Report 2009, Asia and the Pacific, Democratic People's Republic of Korea, available at http://www.unicef.org/har09/index_dprkorea.php.

Preliminary results at the beginning of 2009 revealed a population of 24 million and an estimated population growth rate of 0.8 per cent per annum since the previous census in 1993. The new census should make the situation more transparent and enable all concerned to plan and programme the provision and delivery of food and other necessities more effectively. The authorities also need to ensure that there is no discrimination against groups covered by the census based on the new information available.

B. Freedom from fear

21. The pervasive repression imposed by the authorities ensures that the people live in continual fear and are pressed to inform on each other. The State practises extensive surveillance over its inhabitants and even officials live in daily apprehension, since their colleagues are encouraged to "whistleblow" mutually. Throughout the years, the authorities have bred a culture of mistrust and a policy of divide and rule that permeate families and communities. Matters are made more complicated by the fact that the regime posits a "military first' (songan) policy and monitors its population through the tentacles of its iron-fisted security machinery.

22. The fear factor is most evident when a person does not belong to or does not share the ideology of the elite linked with the dynasty-based leadership and is ostracized or marginalized accordingly. A plethora of crimes are listed in the criminal law, which helps to bolster the regime and instrumentalizes the fear factor. They include: 14 types of anti-State crime; 16 types of crime disruptive of national defence systems; 104 types of crime injurious to the socialist economy; 26 types of crime injurious to socialist culture; 39 types of crime injurious to administrative systems; 20 types of crime harmful to collective life; and 26 types of crime injuring life and damaging property of citizens.[7]

23. The situation is aggravated by the divisive practices adopted by the regime in controlling its population. Throughout the years, the authorities have separated the population implicitly into three groups: those close to the top; the middle level (usually the mass of the urban and rural population); and those classified as hostile to the regime, for instance, political dissidents, those who fall out of favour with the regime and those with various links to the Republic of Korea and Japan. Collective punishments are used against people, with whole families being persecuted and sent into detention where a member falls out of favour with the authorities.

24. Public executions continue to take place; they have been applied more particularly in recent years to those involved in human trafficking. A recent case which has come to the Special Rapporteur's notice is that of seven persons caught for human trafficking. Four of them were sent to re-education centres and three, university students, were executed in public.[8] Another case was of five women reportedly publicly executed for human trafficking in late 2008.[9]

25. Many punishments are totally unreasonable and abusive, and represent widespread and systematic violations of human rights. For instance, students are

[7] White Paper on Human Rights in North Korea 2008, Korea Institute for National Unification, p. 79

[8] "North Korea today No. 206", 13 September 2008, p. 2.

[9] "North Korea today No. 237", 31 October 2008, p. 1.

reported to have been sent to labour training (re-education and forced labour) for watching drama from the Republic of Korea.[10] Citizens who fail to turn up for work allocated to them by the State are sent to labour camps. The wide variety of detention facilities range from political detention camps (kwanliso) for political crimes to correctional labour punishment in labour camps (kyohwaso) for other crimes. There are reports of public executions and secret executions in political detention camps.[11] In 2004, a new type of punishment was introduced in the form of labour training, sentencing to which ranges from six months to two years. That punishment has been used, in particular, for those caught exiting the country illegally.

26. Although torture is prohibited by law, it is extensively practised. In addition, the substandard prison conditions, including lack of food, poor hygiene, freezing temperatures in wintertime, forced labour and corporal punishment, constitute a myriad of abuses and deprivations, ensuring that many prisons are akin to purgatory for the inmates. Bribery may help to mitigate their plight.

27. The justice system leaves much to be desired. It lacks an independent judiciary, lawyers who would act genuinely on behalf of accused persons and juries who would provide the necessary checks and balances for the delivery of justice. Even though judges, lawyers and juries all exist in the system, they are subservient to the "powers that be" and do not uphold the internationally recognized notion of the rule of law. In fact, judges are appointed by the State and operate under the direction of the Supreme People's Assembly. The jury system is based upon two persons who work with the courts, not to ensure that the rights of the accused are upheld but to confirm the list of crimes presented at the trials and to affirm the conviction of the alleged wrongdoer.[12] The lawyer's role is to pressure the accused to confess to a crime rather than to defend his client.[13]

28. On-site open trials are also used, imputedly to educate the public; in reality, they are an instrument to intimidate the public, without due regard for the right to a fair trial and the right of defendants to privacy. Extensive discretion is conferred on the authorities to impose sanctions through extrajudicial means. In particular, the 2004 Administrative Penalty Act grants great powers to administrative bodies to punish people, in disregard of the need for due process of law. Various sanctions, such as labour training (re-education), forced labour, demotion and dismissal from work, can be imposed by administrative bodies, such as people's security agencies and inspectors' offices.[14]

29. Freedoms associated with human rights and democracy, such as the freedom to choose one's government, freedom of association, freedom of expression, freedom of communication and information, privacy and freedom of religion, are flouted on a daily basis by the nature and practices of the regime in power. A single party rules over the country and, despite the pretence of national elections to the Supreme People's Assembly in 2009, such elections are cosmetic; they merely rubber-stamp one-party rule with its determined grip on the population. It is reported that there

[10] "North Korea today No. 183", 12 August 2008.

[11] Korea Institute for National Unification, "White paper on human rights in North Korea 2008", p. 68.

[12] Ibid., p. 144.

[13] Ibid., p. 155.

[14] Ibid., p. 175.

was a 100 per cent turn-out for the 2009 elections and that 299 of the 687 members of the Assembly were replaced by that election, leaving the topmost echelon of the power base untouched. Political dissent is heavily punished and has an intergenerational impact: where the parents are seen as antithetical to the regime, the child and the rest of the family are discriminated against in their access to schools, hospitals and other necessities.

30. Article 67 of the national Constitution (1998) exemplifies the deceptive facade of commitment to the basic freedoms. It states that "civilians shall have freedom of the press, publication, association, demonstration and assembly". In reality, the converse is true. There are no genuine trade unions, apart from those which prop up the regime. Interestingly, reports have been received of protests, led by women, during 2008/09, concerning food prices and against the clamp-down by the authorities on market-related activities, suggesting that discontent is boiling under the surface of oppression. Freedom of association and expression are a crucial avenue for those who seek justice and redress from the authorities.

31. On a related front, the media are heavily controlled and censored, and they form the backbone of an enormous propaganda machine. Reading of books from the Republic of Korea is punishable as a crime of espionage.[15] Chinese books are also prohibited. There is extensive wiretapping of telephones. Interestingly, mobile telephones are now permitted in Pyongyang, but not in border areas. Unless one belongs to the elite, it is forbidden to own computers and to use the Internet without official permission and it is prohibited to watch foreign videos. There are reports of official clamp-downs on compact discs, and surveillance teams of inspectors raid homes to see whether families are (illegally) watching or listening to foreign films and radio or television broadcasts. Such raids are particularly intense near the border with neighbouring countries. Radio and television sets are pre-tuned to Government programmes and there are punishments against those who disobey. Leniency may be obtained from the inspectors at a price, thus breeding extensive bribery and corruption in the country.

32. Despite all this, there are reports of an increasing number of people who watch foreign programmes and who have mobile phones. There is also a spread of USB handy drive, suggesting clandestine access to computers. The rigidity of the regime in the pursuit of social prescription versus individual self-expression is taken to the extreme by the ban on the wearing of blue jeans.

33. Given the extensive intelligence and informant system in the country, the right to privacy is continually infringed by the State apparatus. Neighbourhood groups are also used as an instrument of social control and surveillance, creating a system of fear and mistrust, with multiple layers of surveillance.[16]

34. There are, possibly, outward signs of religious practice, such as the construction of church buildings. The following religious sites have been reported: 2,500 Christian family service sites, 12 Catholic assembly sites, 60 Buddhist temples and 800 Chundokyo secret prayer sites.[17] Some religious ceremonies seem to be allowed. Is there burgeoning freedom of religion in the country? The claim on the part of the authorities that freedom of religion is enjoyed in the country is

[15] Ibid., p. 219.
[16] Ibid., p. 230.
[17] Ibid., p. 236.

unconvincing from other evidence available. It is reported that the religious sites are limited to Pyongyang and that local citizens are still barred from using the facilities available. There are indications that practising religion at a personal level would give rise to persecution.[18]

35. In reality, religions are seen as unwanted competition for the cult-based indoctrination based upon the 10 principles for unitary ideology preached by the regime, which deifies the leadership at the top in a pseudo-theocratic manner. The regime lauds people who give up their lives to save portraits of the country's leader.[19] Recent reports indicate that security agents from the National Security Agency (bowibu) and public security agency (anjeobu) have stepped up their surveillance and infiltration at borders aimed at halting religious activities.[20] At times, they pose as pastors or set up fake prayer meetings to entrap new converts. Those who seek refuge in other countries and who link up with missionaries are liable to be punished severely if sent back to the country of origin.

36. On another front, the authorities have been involved in kidnapping a number of foreign nationals, usually with the aim of using them for espionage purposes and/or of stealing their identity with a view to later infiltration into their countries of origin. A number of cases concerning Japanese nationals abducted by the Democratic People's Republic of Korea remain unresolved and require an effective response from the authorities of the latter country to ensure transparency and accountability. It should be recalled that working-level consultations were held between the two countries in August 2008 at which they agreed on the concrete modality and related measures to ensure a comprehensive investigation of the abductions issue, to be conducted by the Democratic People's Republic of Korea, including the need for that country to establish an investigation committee to undertake and conclude investigations effectively and to cooperate with Japan so that the latter will be able to confirm the results of the investigation with information from relevant sources.

37. Over 10 countries have been affected by the Democratic People's Republic of Korea perpetrating such crimes extraterritorially. A long-neglected question deserving closer attention and expeditious response is the large number of persons abducted from the Republic of Korea.[21] From the 1950-1953 Korean war, there remain key issues to be settled, including prisoners of war, family reunification and missing persons. Indeed, there is a sense of urgency, given that many of the persons concerned and their families are dying of old age, unable to be reunited owing to the impasse created by the Democratic People's Republic of Korea. In mid-2009, that country also seized four fishermen from the Republic of Korea who had reportedly strayed into its waters.

38. Moreover, during the year under review, a worker from the Republic of Korea in the Kaesong Industrial Zone (the joint industrial complex between the two countries using, primarily, workers from the Democratic People's Republic of Korea and investment from the Republic of Korea) was arrested in opaque circumstances.

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[18] Ibid., pp. 240-41.

[19] Ibid., p. 251.

[20] See also United States Commission on International Religious Freedom, *A Prison without Bars* (Washington, 2008).

[21] See also White Paper on Human Rights in North Korea 2009, Korea Institute for National Unification.

Likewise, the plight of two journalists from the United States, arrested and sentenced to long terms of imprisonment for alleged illegal entry and "grave crime", was of major concern to the Special Rapporteur (see para. 71 below). These cases await expeditious resolution based on international human rights standards and the international rule of law.

C. Freedom from discrimination

39. Given the very hierarchical system in the country, those in the elite group live well, while the rest of the population suffers. The discrimination which results from such stratification can be seen through the plight of various groups.

40. Women (other than in the elite group) often have to perform multiple tasks as housewives, breadwinners/traders and labourers forced to undertake Government-ordered programmes, and are under inordinate pressure. While the Constitution guarantees equal rights for men and women, access of women to key decision-making positions lags behind that of men.[22]

41. Women constitute a large proportion of the population involved in the economic sector, particularly in commercial and informal activities. They have been particularly affected by the State's reassertion of control over its population in the economic sphere, as seen from the various examples provided above, such as the prohibition on women under a certain age trading, and the closure of markets, with resulting clashes between women traders and the authorities. As noted in a recent report:

> "In Cheonggin, Hamkyeongbuk-do, there was a confrontation between the women who do business in the market and the market officer checking on the 'No business for females under 49 years old' regulation. It is known that more than 1,000 female merchants protested against the regulation.
>
> "According to a Korean Chinese, K ..., who visited a market in a city of North Korea in mid-March 2008, when the North Korean government forbade people of less than 45 years old from trading, a scene like one in a spy movie happened. K ... reported that people were chased here and there because they were prevented from selling their goods. So, young women took their mothers-in-law or grandmothers and sat them down at the front of the stalls while they continued selling secretly from the rear. Occasionally they were caught and arrested by security agents.
>
> "In conclusion, the more food aid to North Korea from the international community increases, the more distribution by the State will be accelerated and, furthermore, it means that the right of access of the people to food can be controlled."[23]

42. A key concern is the impediment facing freedom to undertake economic activities for one's survival, especially where the State fails to provide adequately for the population. The authorities have also been prohibiting women from using bicycles (a key vehicle for access to trade) and compelling them to wear skirts.

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[22] Ibid., p. 294.

[23] Sing Hyun-uk, "The right to food", in White Paper on Human Rights in North Korea, Korean Bar Association, pp. 297-298.

43. The food and other shortages have taken their toll, particularly on women, with grave consequences since the mid-1990s. This is seen from the high malnutrition rate among pregnant women and also explains why United Nations agencies have been targeting this group for special attention. It can be recalled that in the last nutritional assessment undertaken by United Nations agencies, dating from 2004, maternal anaemia was found to be around 35 per cent.

44. Violence, neglect, abuse and exploitation pose continuing concern to women at home, outside the home, within the country and across its borders. The issue of sexual violence at home has not been dealt with adequately, while women who are on the move are often abused and exploited for many purposes. There is rampant human smuggling and trafficking where women and other groups seek to leave the country.

45. With regard to assessment of the implementation of children's rights, 2009 has proved to be a key year, as a delegation from the Democratic People's Republic of Korea appeared before the Committee on the Rights of the Child as part of the country's obligations under the Convention on the Rights of the Child. The Special Rapporteur commented on the most recent report of the Democratic People's Republic of Korea to that Committee (CRC/C/PRK/4) in his reports to the Human Rights Council (HRC/10/18) and to the General Assembly (A/63/322) in 2008. Suffice it to note that the report of the Democratic People's Republic of Korea is decidedly thin on special protection measures for children in various difficulties, such as street children, children of those who do not belong to the elite, children of political dissidents, child refugees and children who have to face the criminal justice system.

46. A detailed report in this regard has also been submitted by civil society. Based on interviews with children, it contains various elements deserving attention and analysis, including forced labour of children and forced separation from the parents, such as for manure collection and construction work.[24]

47. Another area of concern is linked with the reforms of the criminal law in 2007 having an impact on children, namely, the introduction of "public education" so as to rehabilitate those who have committed minor crimes.

> "The 8th revised Criminal Law, amended and supplemented in July 2007, provides that 'a person who underwent public education is considered to be innocent' in Article 66, and 'public education for a criminal should be given by the institution, company, group or district to which s/he belong'. ... The new 'public education' measures should be thus understood as a social measure for re-education, not as a punishment. Moreover, 'public education', which is usually applied to minors is undertaken by the school concerned, and occasionally by the Children's Union which consists of 8-13 year old children and the Youth League of 14 to 16 year old children."[25]

48. This provides leeway to local authorities, such as schools, to "educate" the children concerned to improve their behaviour. While the trend of not sending children into detention is welcome, the new system needs to be made transparent and capacity-building provided for local authorities responsible for such education

[24] Situation Report on the Rights of the Child in the DPRK, Citizens' Alliance for North Korean Human Rights and the Asia Centre for Human Rights, Seoul, 2008.

[25] Young-Hwan Lee, "Assessments of the situation of torture and recommendations to North Korea", in *Life and Human Rights in North Korea*, vol. 48, Summer 2008, pp. 21-22.

with a view to their respecting the children's rights and using humane methods in offering such education.

49. Samples drawn from the concluding observations of the Committee on the Rights of the Child (CRC/C/PRK/CO/4) in response to the country's report in 2009 highlight key anomalies as follows:

> "The Committee is concerned that, despite the Constitutional guarantees, the principle of non-discrimination is not fully respected in practice, vis-à-vis children with disabilities, children living in institutions, and children who are in conflict with the law. The Committee is further concerned that children may be faced with discrimination on the basis of the political or other opinion, social origin, or other status, either of themselves, or of their parents. ...
>
> "The Committee is alarmed that many of the children placed in residential care are in fact not orphans and that a large number of children are customarily placed in residential institutions due to the lack of effective gate-keeping mechanisms or care alternatives. The Committee also reiterates its previous concern that triplets are automatically institutionalized by the State and that parents are not offered alternative solutions that would allow them to raise their children at home. The Committee is also concerned about the situation of children whose parents are detained. ...
>
> "The Committee is concerned about children who cross the border into neighbouring countries who may face harsh treatment upon return or repatriation. ...
>
> "The Committee also expresses concern at the reportedly growing incidence of substance abuse by children and information that children are being mobilized to work on State opium poppy farms. ...
>
> "The Committee regrets that the State party has not developed a full-fledged juvenile justice standard in compliance with the Convention and other relevant United Nations standards."

50. The Democratic People's Republic of Korea is not yet a party to the optional protocols to the Convention on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, or to various International Labour Organization (ILO) conventions. Accession to those instruments will help to raise standards in this area and ensure more transparency of the situation, with a view to effective reform.

51. With regard to persons with disabilities, a constructive development was the adoption of a new law on this issue in 2003 which opened the door to reform of an antiquated system and the former practice of incarcerating persons with disabilities. The Special Rapporteur underlines that the damage caused by State practices in the past also needs to be rectified. Those who were victims of inhumane conditions need to be assisted to recover and reintegrate fully into society. Some of the abhorrent past practices which require accountability include the reported "neutering" of those with dwarfism to prevent them from reproducing.[26] There is also the need to accede to the new international treaty on the rights of persons with disabilities.

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[26] White Paper on Human Rights in North Korea 2008, Korea Institute for National Unification, p. 182.

52. With regard to persons in the ageing group, clearly one negative impact of the food crisis has been the rise in their deprivations, especially as they are among the first to suffer from cutbacks by the Government. United Nations agencies are increasingly aware of this, and food aid and allocations are therefore being targeted also to this group. Basic needs of the ageing population which also require attention are access to medical care and other social benefits.

D. Freedom from persecution

53. The oppressive environment in the country, coupled with persecution of those who fall foul of the regime, has resulted in forced displacements of people. Paradoxically, since the beginning of the regime, the authorities have followed a policy of strict control over the movement of its citizens. Internally, travel permits are required if people wish to travel across the country. For external travel, an exit visa is required by article 9 of the Immigration Law, which states that "all citizens may leave or enter the country on official as well as personal business. Citizens wanting to travel abroad must obtain a certificate of exit/entry from the Foreign Ministry, or relevant agencies or organizations in charge of exit/entry affairs".[27]

54. In 2003, there were indications that the strict control exercised by the authorities could be relaxed slightly for those who had relatives in an immediately neighbouring country. Thus, travel permits facilitated the movement of persons in this group to and fro between the country and its immediate neighbours.

55. In reality, the situation is more complex. For a long time, there has been an outflow of persons persecuted by the authorities who have left the country spontaneously and clandestinely without travel permits. The food crisis of the mid-1990s and thereafter has led to increased migration of people in search of food and other necessities across the border. There has thus been a persistent flow of people into neighbouring countries, at times in search of food, employment and livelihood, at times escaping from persecution and oppression, at times as composite flows. In recent years, there has also been a small flow of migrant labour within the country, travelling to work in special economic zones, as well as across the border to other countries as part of bilateral arrangements on the importation of labour.

56. There has been much discussion internationally on whether these flows are tantamount to forced migration in search of asylum, giving rise to refugee status. This would be coupled with the application of the principle of international law concerning non-refoulement, the inherent right of the refugee not to be pushed back to areas of danger. The Special Rapporteur has addressed this topic extensively in his previous reports to the Human Rights Council, bearing in mind that the international definition of the "refugee" is a person who leaves his or her country of origin for a "well-founded fear of persecution" (see A/HRC/4/15, A/62/264, A/HRC/7/20, A/63/322 and A/HRC/10/18). This "well-founded fear of persecution" factor may arise before he/she leaves the country and/or after he/she leaves the country, persons in the latter category being known as refugees "sur place". In the case of those leaving the Democratic People's Republic of Korea, particularly for food and economic reasons, while at first glance they are not refugees because they do not leave the country for fear of persecution, they may be seen as refugees if they

[27] Ibid., p. 201.

fear persecution upon return to the country of origin. Such fear is particularly caused by the fact that most people who leave the country in such situations leave without an exit visa and are subject to the threat of prosecution upon return for having left the country illegally. "Well-founded fear of persecution" due to that threat may give rise to refugee status subsequently.

57. Whether one classifies a person as a refugee or not, it is important to highlight the need for all persons in migration situations to be treated humanely, in keeping with internationally recognized human rights. A worrying trend in some countries (first asylum countries) which receive persons who seek asylum from the country in question is the tendency to classify them as illegal immigrants and subject them to detention, prosecution and even threat of push-back to the country of origin, where dangers lurk ominously. The Special Rapporteur has consistently been of the opinion that illegal immigrants and refugees are different categories and should be treated differently. While the former are still protected by their country of origin, the latter are not, and the two categories should not be confused. The refugee thus falls under international protection, for lack of national protection. The main United Nations agency which has the mandate to deal with those who seek asylum, the Office of the United Nations High Commissioner for Refugees, needs to be well supported to enable it to access those who seek asylum and to provide assistance and protection to those falling into the classification of refugees. Bilateral links with and supports from possible countries of destination may also help to attenuate the strictures of the countries of first asylum.

58. During the past year, owing to the factors described above, arrivals in neighbouring countries have dwindled, and the scenario facing those who seek asylum has become more stringent. There are now more extensive checks on persons who travel within the country. More restrictions have been imposed on exit from the Democratic People's Republic of Korea and entry into neighbouring countries. There are reports of more severe sanctions being imposed on those who seek to leave the country and those who are forcibly returned to the country, despite possible indications of a more lenient attitude on the part of the authorities in recent years. Some sources report a "shoot on sight" policy in regard to those who seek to leave the country clandestinely, in addition to violence against pregnant women forcibly returned to the country. One report notes as follows:

> "Female repatriates suffer what is called 'pumping' torture, which is a common sexual torture to find money hidden inside a woman's vagina. Women who face this torture are stripped of their clothing, and their arms are tied behind their backs. Then they squat and stand repeatedly until they lose consciousness. It maximizes the sense of shame in women ... Assault against pregnant women is also routinized, and wrapping the forcibly aborted baby's face with plastic to [induce] death is known [in] frequent occurrences."[28]

59. Instead of the previous practice of imposing fines on returnees, prison sentences are now being applied. Bribery may attenuate the sanctions concerned. Children are being punished more severely upon return. It is reported that the families of those left behind by asylum-seekers are now being targeted for punishment as a collective deterrent measure.

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[28] Kim Tae-Hoon, "Human rights for the socially marginalized class", in White Paper on Human Rights in North Korea, Korean Bar Association, p. 431.

60. The movements are facilitated by human smugglers and traffickers, who often prey on those who seek asylum. Recent information indicates that many women end up in forced marriage situations.[29] The background of those on the move and the ensuing complications may differ. On the one hand, there are those who stay for a long period in a neighbouring country or other country of first asylum before moving to the Republic of Korea as their final destination. On the other hand, there are those who transit only briefly through countries of first asylum before reaching the country of final destination. From information received, the former are often more traumatized than the latter group, as they have to endure a myriad of abuses for a long time before reaching the country of destination and may thus need longer-term support.

61. Currently, women constitute the majority of those seeking asylum using routes passing through other countries. They are at times accompanied by children and in many cases are seeking to be reunited with their spouses and families in the country of final asylum. During the past year, some were threatened, in some South-east Asian countries, with detention and deportation, in breach of their rights and the principle of non-refoulement. The Special Rapporteur calls for improved measures from countries of asylum, especially countries of first asylum, to offer shelter to these groups in adequate welfare centres, to shun detention in principle and in practice, to abide by the principle of non-refoulement and to expedite the process to enable them to resettle in the country of final destination.

62. More consideration should also be given to possibilities for family reunion. This is particularly pertinent to those who are forced to marry nationals of the neighbouring country along the way and leave their spouses and children behind in their quest for asylum in other countries. This invites reflection on whether the children who are the offspring of such relationships are stateless in practice. The matter needs to be resolved on the basis of international solidarity and cooperation to mitigate the plight of families and to ensure that the children born of unions between citizens of the Democratic People's Republic of Korea and nationals of other countries are protected and are accorded citizenship by an appropriate State, rather than being left in the limbo condition of statelessness.

E. Freedom from exploitation

63. Multiple forms of exploitation are committed by the authorities and other actors against the general population, from systemic exploitation to exploitation at the community and personal levels. Most evidently, it is the power base at the apex of the system which exploits the people to ensure its own survival. This is linked with the question of who will be the successor in the dynastic process and whether the military arm of the regime is gaining more powers. The current ideological drive of the regime is to ensure a strong and prosperous nation by 2012. The year 2009 is also the year of the "150-day campaign", which compels people to produce more food and implement various Government-imposed programmes, such as road building and construction work.[30] It is ironic that people are being forced to work

[29] "Lives for sale", Center for Human Rights in North Korea, Washington, 2009.

[30] North Korea Today, No. 281, 15 June 2009; No. 283, 27 June 2009; No. 285, 24 July 2009; and No. 286, 17 July 2009.

more through mass mobilization, even though this is not necessarily to their benefit but to the benefit of the regime in power and its own sustenance.

64. There is also a basic paradox: while many members of the population are in abject poverty and suffering the prolonged deprivations linked with shortage of food and other necessities, the country itself is endowed with vast mineral resources controlled by the authorities. The exploitation of the ordinary people has become the pernicious prerogative of the ruling elite. This is all the more ironic, since it is reported that the economy has improved slightly over the past year, an indication that more resources could be available to help the population. According to information received, the country's trade with the outside world (excluding that with the Republic of Korea) reached a record 3.8 billion United States dollars in 2008 and trade rose by 29.7 per cent compared with 2007. In April 2009, the Supreme People's Committee approved the current year's budget, set at 482.6 billion won (US$ 1 = 140 won), an increase of some 5 per cent compared with last year.

65. Thus, some national resources are available, but are misplaced and misspent, resulting in the exploitation of and detriment to the general population. It was recently reported also that the authority to export the country's most valuable export item, anthracite, has been transferred from the civilian arm of the Cabinet to a military trading company, indicating greater control by the military over national resources. Those budgetary resources would be, and should be, much better spent on the welfare of the population.

66. The authorities also exploit and manipulate the population through other ways and means. First, as already referred to above, the authorities seek to control the food distribution process as a means of controlling the population and making them dependent on the regime. The issue is not simply lack of food for the population, but rather the manipulative control of food distribution by those in power. Second, while humanitarian aid has helped the population to a great extent, it should be acknowledged that such aid has also provided the authorities with the opportunity of not using its resources to help its people, thereby avoiding committing national resources to food purchases on the world market. Those resources have been channelled instead to sustaining the power elite and the militarization drive. Third, the State has failed to commit itself adequately to the generation of food security. Even where there are natural disasters afflicting the general population, the root causes are often man-made, and it is the regime in power which shares responsibility for this. United Nations agencies are increasingly aware of the dilemma and this is why they are placing greater emphasis on environmental conservation, avoidance of excessive double-cropping, advocacy of rotation of crops, disaster preparedness and enabling people to be more involved in safeguarding their livelihood. An important component of the right to life and the right to work which needs to be protected from exploitation is the ability to undertake economic activities of one's own choice. Yet current developments undercut these economic possibilities, since the State seeks to assert more control over its citizens and to rein in market activities which are linked to people's choices.

67. On another front, impunity is enjoyed by the regime in power and the machinery surrounding it. For instance, the justice system is in desperate need of revamping, despite the various legislative reforms in recent years. The capacity of law enforcers to shun malpractice should also be built up, while the authorities are

in need of a clear policy to stop public executions and other abuses in the law enforcement process.

68. Opening the door to freedoms such as the freedom to choose a government and the freedom of expression and association invites reflection on the wherewithal and avenues to institute more democratization in the country, to ensure genuine self-determination.

69. Interestingly, non-governmental organizations have repeatedly called for more action, especially at the highest level from the United Nations, to ensure that the State and the related power base meet their responsibility to protect human rights and to take action against egregious violations. A recent report advocates that the United Nations should refer more concretely to the State's responsibility to protect its citizens and establish a group of experts to investigate whether the egregious violations in the country are tantamount to a violation of the "responsibility to protect".[31] Both the Security Council and the General Assembly have a key role to play in such a process, and there is a need for them to take more dynamic measures on this front.

70. In the meantime, the widespread, systematic and reprehensible violations of human rights continue unabated in the country. They require strong action from the international community, including a comprehensive approach by the United Nations system, to influence the authorities to respond substantively and constructively to the human rights challenge. The Universal Periodic Review process instituted by the Human Rights Council, under which the Democratic People's Republic of Korea will appear in future before the Council to be assessed in regard to its human rights performance, can also be an avenue for addressing those issues and for encouraging the country to reform its governmental system and overcome past excesses that have engendered systemic exploitation.

III. Communications

71. The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on violence against women, its causes and consequences and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention jointly sent an urgent appeal to the Government of the Democratic People's Republic of Korea on 2 April 2009, seeking clarification on the circumstances of the arrest and detention of two United States journalists and the initial steps taken by the Government to safeguard their rights. In a communication dated 8 April 2009, the Government of the Democratic People's Republic of Korea replied that the two reporters had been detained on 17 March 2009 as a result of their hostile acts and illegal entry into the Democratic People's Republic of Korea by crossing the border between the Democratic People's Republic of Korea and China. It also said that, while investigations were under way, consular contact was allowed and treatment of the detained was in accordance with international law.

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[31] DLA Piper, Committee for Human Rights in North Korea and the Oslo Center for Peace and Human Rights, Failure to Protect: The Ongoing Challenge of North Korea (Washington, 2008).

IV. Conclusions and recommendations

72. **The above analysis points to an array of rights and freedoms which are violated egregiously by the authorities in the Democratic People's Republic of Korea on a daily basis, much to the pain and suffering of the ordinary population. The violations are evidently widespread, systematic and abhorrent in their impact and implications. The freedoms from want, from fear, from discrimination, from persecution and from exploitation are regrettably transgressed with a sense of impunity on the part of those authorities, in an astonishing setting of abuse after abuse, multiplied incessantly. The violations compromise and threaten not only human rights, but also international peace and security, demanding effective counter-action. The urgent call for action demands comprehensive responses from the United Nations system and other stakeholders at all levels, national and international.**

73. **The authorities in the Democratic People's Republic of Korea should take the following measures:**

(a) **Immediately (short term):**

(i) **Respond effectively with regard to freedom from want by ensuring effective provision of and access to food and other basic necessities for those in need of assistance; cooperate constructively with United Nations agencies and other humanitarian actors on the issue; and enable people to undertake economic activities to satisfy their basic needs and supplement their livelihood without State interference;**

(ii) **End the punishment of those who seek asylum abroad and who are sent back to the country, and instruct officials clearly to avoid the detention and inhumane treatment of such persons;**

(iii) **Terminate public executions and abuses against the security of the person, and other violations of rights and freedoms, by means of law reforms and related implementation measures, clearer instructions to law enforcers to respect human rights, related capacity-building and monitoring of their work to ensure accountability;**

(iv) **Cooperate effectively to resolve the issue of foreigners abducted to the country and to address the other issues, including the consequences of the Korean war, which give rise to fear in the country;**

(v) **Respond constructively to the recommendations of the Special Rapporteur; reply effectively to his communications; and invite the Special Rapporteur to visit the country to take stock of the situation and recommend needed action;**

(b) **Progressively (longer term):**

(i) **Modernize the governmental system by instituting reforms to ensure greater participation and compliance with international human rights standards;**

(ii) **Institute equitable development policies based upon "people first" policy and reallocate national budgets, including military budgets, to the social sector;**

(iii) **Introduce more extensive food-security-related measures, such as sound agricultural practices and environmental conservation, and people's participation and mobilization in planning, programming and benefit-sharing;**

(iv) **Guarantee personal security and freedoms by dismantling the pervasive surveillance and informant/intelligence system, reforming the justice system and abiding by the rule of law, with safeguards for accused persons, fair trials, development of an independent judiciary, and checks and balances against abuse of power;**

(v) **Become a party to core human rights treaties and ILO conventions, and adopt measures to implement them effectively;**

(vi) **Pay special attention to overcoming discrimination and reducing the vulnerability of specific groups such as women, children, those with disabilities and the elderly, by improving human rights protection against neglect, abuse, exploitation and violence;**

(vii) **Address freedom from persecution in relation to refugee outflows by tackling the root causes of displacement; and criminalize those who exploit refugees through human smuggling and trafficking, while not criminalizing the victims;**

(viii) **Act against the impunity of those responsible for the violence and violations by means of effective remedies at the national and local levels;**

(ix) **Engage well with the Universal Periodic Review process to ensure transparency and reform; and request technical assistance from the Office of the United Nations High Commissioner for Human Rights to help promote and protect human rights comprehensively;**

(x) **Undertake a constructive dialogue with the treaty bodies that monitor the implementation of the human rights treaties to which the country is a party, and cooperate with all United Nations mechanisms, including the special procedures, concerning effective follow-up of their recommendations and access to the country.**

74. **The international community is invited to take the following measures:**

(i) **Underline concretely the need for an integrated approach that calls for the prevention of violations, the effective protection of human rights, the provision of care and assistance in an accessible and accountable manner and the enjoyment by the people of their rights and freedoms;**

(ii) **Advocate strongly the need to overcome the exploitation of the people by the State authorities by advocating for a "people first" rather than the current "military first" policy, with an equitable development process, food aid and food security, and with due respect for the principle of "no access, no food", coupled with adequate monitoring;**

(iii) **Respect the rights of refugees, particularly concerning the principle of non-refoulement, and the human rights of migrants, and reform national immigration laws that might otherwise lead to the detention or forced return of refugees or those who seek asylum;**

(iv) **Use the country's refusal to cooperate with the Special Rapporteur as a key indicator for the Universal Periodic Review;**

(v) **Maximize dialogue with the Government of the Democratic People's Republic of Korea to promote dispute resolution, and open up the space for human rights discourse and action, providing relevant packages of incentives and graduated measures, possibly linked with security guarantees, as appropriate;**

(vi) **Address the issue of impunity through a variety of actions, whether in terms of State responsibility or individual criminal responsibility, and enable the totality of the United Nations system, especially the Security Council, to adopt measures to prevent egregious violations, protect people from victimization and provide effective redress, with due regard for broad-based people's participation in governance and government.**